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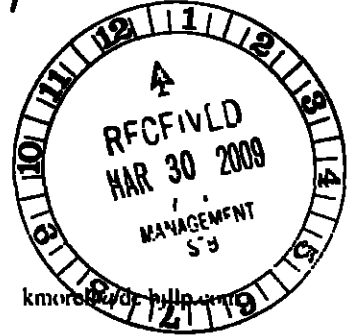
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KARL MORELL



March 30, 2009

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re STB Finance Docket No. 35206, Petition For Injunctive Relief

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of the Reply of BNSF Railway Company to Motion To Strike, Response of Edwin Kessler and Motions To Impose Sanctions.

Please time and date stamp the extra copy of the Reply and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

Enclosures

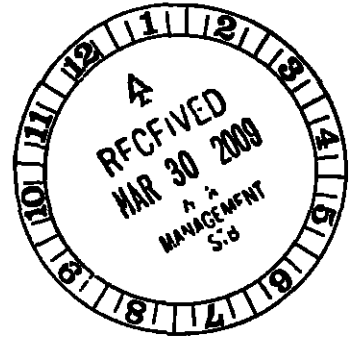
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BEFORF THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35206



REPLY OF BNSF RAILWAY COMPANY TO MOTION TO STRIKE, RESPONSE OF
EDWIN KESSLER AND MOTIONS TO IMPOSE SANCTIONS

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Attorneys for
BNSF Railway Company

Dated March 30, 2009

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35206

REPLY OF BNSF RAILWAY COMPANY TO MOTION TO STRIKE, RESPONSE OF
EDWIN KESSLER AND MOTIONS TO IMPOSE SANCTIONS

BNSF Railway Company ("**BNSF**") hereby replies to the Motion to Strike ("**Motion to Strike**"), the Response of Edwin Kessler ("**Response**") and the Motion To Impose Sanctions ("**Sanctions Motion**") filed with the Surface Transportation Board ("**Board**") on March 11, 2009. The Motion to Strike, the Response and the Sanctions Motion were obviously written by James Riffin ("**Riffin**") and presumably signed by Edwin Kessler ("**Kessler**") BNSF also replies to the Motion To Impose Sanctions filed by Riffin on March 17, 2009 ("**Riffin Motion**").

The Petition for Injunctive Relief ("**Petition**") regarding a locomotive purportedly owned by Kessler ("**Locomotive**") was filed on January 26, 2009. BNSF filed its Reply to the Petition on February 17, 2009 ("**BNSF Reply**").

I. REPLY TO MOTION TO STRIKE

Pursuant to 49 C F R § 1104 13(a), a motion addressed to a pleading must be filed within 20 days after the filing of the pleading, or, in this proceeding, by March 9, 2009. The Motion to Strike was late-filed and, consequently, should be rejected. As is demonstrated below, the Motion to Strike is also totally without merit and should, alternatively, be denied

II. REPLY TO RESPONSE

The Response is an impermissible reply to a reply. *See* 49 C.F.R. § 1104.13(c). The Response is also late-filed. *See* 49 C.F.R. § 1104.13(a). Notwithstanding these procedural infirmities, BNSF urges the Board to accept the Response for filing since it substantiates the evidence submitted in the BNSF Reply demonstrating that the Petition was riddled with false information and that Riffin and Kessler have been filing forged and fraudulent documents with the Board.¹

In the Petition, Riffin and Kessler represented to the Board that Kessler was the owner of the Locomotive, that prior to July 17, 2008, Kessler had contracted with BNSF for the movement of the Locomotive to Oklahoma City, OK and that the full freight charges for the movement to Oklahoma City had been paid by Kessler prior to July 17, 2009. Petition at 2. Now, in the Response, Riffin and Kessler conveniently change their story and would have the Board believe that Riffin purchased the Locomotive for use in Vicksburg, MS on a line Riffin sought to acquire through the Board's offer of financial assistance ("OFA") procedures. *See* STB Docket No. AB-103 (Sub-No. 21X) *The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS* ("KCS Abandonment") Riffin, however, acquired the Locomotive in October 2007 well before any OFA was filed in the *KCS Abandonment* proceeding.

¹ BNSF will not address the numerous false, misleading and nonsensical statements contained in the Response. For example, Riffin once again claims that the Shields Spur turnout was removed. Response at 2. The turnout was not removed and, in any event, is irrelevant to this proceeding. Riffin also repeats the contention that "Kessler has a strong desire to preserve rail service" on the rail line that needs to be relocated to accommodate a major highway project in Oklahoma City, OK. Response at 3. As the Board undoubtedly knows, Kessler is seeking to use the Board's processes to thwart the highway project. Riffin once again makes the argument that BNSF has an obligation to deliver the Locomotive to a track owned by a third party that refuses to accept the Locomotive on its tracks. These and the numerous other false allegations set forth in the Response should be ignored by the Board.

In the Response, Riffin and Kessler allege that, after Riffin's OFA in the *KCS Abandonment* proceeding failed, Riffin arranged with BNSF to have the Locomotive shipped to Maryland via Memphis, TN. Response at 4-5. According to the Petition, however, Kessler had already arranged with BNSF to move the Locomotive to Oklahoma City. Petition at 2. In the Response, Riffin and Kessler allege that on June 12, 2008, Riffin prepaid BNSF for the movement to Memphis. Response at 5. According to the Petition, Kessler had already prepaid BNSF for the movement of the Locomotive to Oklahoma City. Petition at 2.

In the Petition, Riffin and Kessler state that the original instructions to BNSF were to deliver the Locomotive to Oklahoma City and that it was BNSF that elected to misroute the Locomotive to Memphis. Petition 2-3. According to the Response, Riffin instructed BNSF to deliver the Locomotive to Memphis for interchange with CSX Transportation ("CSX") and that Riffin had pre-paid both BNSF and CSX. Response at 5. But again, according to the Petition, Kessler had already prepaid BNSF for the movement to Oklahoma City. Petition at 2. According to the Response, BNSF was not paid for the movement from Memphis to Oklahoma City until August 4, 2008.

As to the forging of pleadings filed in Kessler's name, Riffin provides the following absurd response: "Kessler has known Mr. Riffin for several years. *** Kessler read Mr. Riffin's pleadings, then began to emulate what Mr. Riffin did." Response at 10. Riffin fails to explain why Kessler became incapable of signing his own name once he started to emulate Riffin.

The Petition and Response are filings made under oath before the Board, notwithstanding the fact that the affirmation on the Petition is a forgery. While both filings contain numerous false statements, certain factual assertions in the two pleadings are irreconcilable. Consequently, the pleadings themselves conclusively demonstrate that one or the other contains false

information intended by Riffin to mislead the Board. Both pleadings are purportedly filed by Kessler but the signatures on the two documents are not by the same individual. Neither Kessler nor Riffin denies that the affirmation on the Petition was not signed by Kessler. Nor do they deny BNSF's assertion that it was Riffin, and not Kessler, that signed the affirmation. Their response is simply to state "The signatures that appear on all of Kessler's pleadings are Kessler's authorized signatures." Response at 8. Kessler, however, is not permitted to authorize forgeries of his signature when the forgeries are specifically intended to mislead the Board nor is Kessler permitted to conceal from the Board the true author and signer of pleadings submitted in his name. Riffin, a non-attorney, is not authorized to represent Kessler before the Board nor is he permitted to forge Kessler's signature.²

III. REPLY TO SANCTIONS MOTION AND RIFFIN MOTION

The Sanctions Motion and Riffin Motion allege that BNSF "uttered irrelevant, immaterial, impertinent and scandalous matter" in the BNSF Reply by describing certain conduct by Riffin. Both Motions are late-filed [49 C.F.R. § 1104.13(a)] and not verified [49 C.F.R. § 1104.4(b)] and thus should be summarily rejected. Alternatively, the Motions should be denied as lacking merit.

While Riffin and Kessler seek sanctions, neither denies a single fact concerning Riffin set forth in the BNSF Reply. The statements concerning Riffin cannot possibly be "defamatory" since they are true. While Riffin may view his past behavior as "scandalous", BNSF's accurate depiction of that behavior cannot be deemed scandalous. BNSF has simply brought to the Board's attention Riffin's improper behavior in proceedings before the Board and Riffin's

² Riffin claims to have a "J.D., and an L.L.M." Riffin Motion at 2, note 1. Simply graduating from a law school does not make one an attorney; one must also pass a state bar examination and comply with that state's ethics rules. Riffin has been unwilling or unable to do either.

extensive history of bad behavior in matters outside the Board but which, for the most part, are related to Riffin's attempt to shield himself from complying with Maryland state laws by using the Board as a shield

The Board's Cannons of Ethics provide that all persons appearing before the Board shall "conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States " 49 C F R. § 1103.11. The Rules of Professional Conduct governing an attorney's responsibilities obligates an attorney to inform a tribunal, such as the Board, whenever a fraud is being committed in a proceeding. Thus, the information concerning Riffin is not impertinent. Nor is the information concerning Riffin irrelevant or immaterial. The fact that Riffin, in concert with Kessler, has perpetrated a fraud on the Board in this and other proceedings is highly relevant and material to the Board's ability to police its proceedings and render proper decisions.³

The Sanctions Motion and Riffin Motion are totally without merit and should be denied. If sanctions are appropriate (and BNSF believes that they are) they should be focused on the perpetrators of the fraud and not on those that exposed the fraud. The Board would be justified in appropriately sanctioning Riffin as a frivolous litigant and referring Riffin and Kessler to the Department of Justice ("DOJ") for investigation and possible criminal prosecution.

³ Riffin has a tendency of seeking sanctions against anyone who exposes his nefarious behavior. In STB Docket No. AB-290 (Sub-No. 293X), *Norfolk Southern Railway Company – Abandonment – Petition for Exemption – Norfolk and Virginia Beach, VA* (not printed), served November 6, 2007 ("NS Abandonment"), Riffin sought sanctions against Norfolk Southern Railway Company ("NS") for bringing to the Board's attention Riffin's attempted extortions.

IV. REQUEST FOR SANCTIONS

A. REJECTION OF FRAUDULENT FILINGS

At an absolute minimum, the Board should reject all of the pleadings filed by Riffin and Kessler in this proceeding and in STB Finance Docket No 35164, *BNSF Railway Company – Petition For Declaratory Order*, currently pending before the Board (“*Declaratory Order Proceeding*”). Riffin’s falsified signature of Kessler and Kessler’s concealment of the fact constitute criminal violations under 18 U.S.C. § 1001. Pursuant to 49 C.F.R. § 1004.10, the Board may reject any document submitted for filing that does not comply with the Board’s rules. Surely, the filing of false information and fraudulent documents does not comply with the Board’s rules.

B. SANCTIONS FOR FRIVOLOUS LITIGATION

In the BNSF Reply, BNSF noted that on October 4, 2007, Riffin was sanctioned by a United States District Court as a “frivolous” litigant. BNSF Reply at 4. More recently, Riffin was declared a “frivolous litigant” by the Chief Administrative Judge of the Circuit Court for Baltimore, MD. A copy of the Memorandum Opinion (“**Memo Op**”) is attached as Exhibit 1. In so doing, the Chief Administrative Judge noted that:

it has come to my attention that James Riffin is a party to thirteen (13) open cases before the Court. All of these cases arise out of the same legal controversy: to wit, whether he, as an alleged railroad operation, is exempt from State and local environmental regulations. After reviewing the numerous previously decided cases involving Mr. Riffin and state and local authorities, it is clear that the legal controversy underlying this dispute has already been decided against Mr. Riffin in administrative, State and Federal Courts. However, Mr. Riffin continues to file frivolous and vexatious litigation against Baltimore County and various County officials, including the Assistant County Attorneys working on these cases, for the purpose of avoiding or forestalling the legal rulings that this and other courts have made against him.

Memo Op at 1-2. The Chief Administrative Judge noted that "Courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims." Memo Op at 2. The Judge declared Riffin a "frivolous litigant" and ordered him precluded from making any filings in the Circuit Court unless he first obtains approval from the court. The Judge reserved judgment on whether Riffin should also be required to pay attorney's fees.

In STB Finance Docket No. 34501, *James Riffin d/b/a The Northern Central Railroad – Acquisition and Operation Exemption – In York County, PA* (not printed), served February 23, 2005, the Board noted that it "has a responsibility to protect the integrity of its processes, and the Board is concerned that Riffin may be using the licensing process in improper ways." Subsequently, in *NS Abandonment*, the Board expressed serious concerns over Riffin's conduct. Rather than impose the sanctions suggested by NS, the Board stated that it "will closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board" and admonished Riffin "that abuse of the Board's processes will not be tolerated." *NS Abandonment* slip op. at 8. As is demonstrated below, Riffin has ignored the Board's admonitions and has embarked on a campaign of vexatious litigation including the filing of numerous false statements and fraudulent documents.

During the past two years, Riffin has made 98 filings with the Board in his own name. During that same time period, Riffin has forged Kessler's signature on at least 24 occasions. As explained below, it appears that Riffin has also forged signatures in at least one other Board proceeding. Under these circumstances, the Board is more than justified in declaring Riffin a frivolous litigant and imposing sanctions similar to those imposed on Riffin by the U.S. District Court and the Maryland Circuit Court.

C. SANCTIONS FOR CRIMINAL VIOLATIONS

Riffin and Kessler have conspired to commit fraud and have submitted false information and fraudulent documents to the Board in at least three proceedings

Attached as Exhibit 7 to the BNSF Reply is a document filed by Riffin and Kessler on March 21, 2007, in STB Docket No AB-6 (Sub-No 430X), *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, Oklahoma* (“**Oklahoma Abandonment**”) That same document is attached as Exhibit 2 to this Reply for the convenience of the Board As BNSF pointed out in the BNSF Reply, MDRC is a company owned by Riffin, the company is headquartered at the home or business address of Riffin and the purported owner, J Dennis, appears to be one of Riffin’s aliases It has recently come to BNSF attention that the address and phone number on the document belong to Eric Strohmeyer, a cohort of Riffin in various ventures and an individual who at one time falsely claimed to be the owner of the Locomotive

The filing of this document with the Board is a criminal offense under 18 U S C § 1001, which provides, in pertinent part, that

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation, or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,shall be fined under this title or imprisoned not more than 5 years, or both.

The filing of the attached document with the Board is clearly a criminal offense under Section 1001, as are the numerous other forged filings containing false information made by Riffin in this proceeding, in the *Oklahoma Abandonment* proceeding and in the *Declaratory*

Order proceeding In addition, several filings in the *KCS Abandonment* proceeding contain signatures that are not those of Raymond B. English but were likely forged by Riffin. It also appears that Riffin does not limit his forgeries to filings before the Board. At least three filings before the United States Court of Appeals, District of Columbia Circuit in Case No. 08-1040, *Edwin Kessler v. STB* appear to have been forged by Riffin.

Given the magnitude of the offenses committed by Riffin and abetted by Kessler, the Board would be more than justified to submit the records in these proceedings, as well as other Board proceedings wherein Riffin has overtly or covertly participated, to the DOJ for investigation and possible criminal prosecution.

D. ATTORNEY'S FEES

Given Riffin's long history of meritless, frivolous and vexatious litigation before the Board including the filing of false statements and fraudulent documents, the Board should award BNSF's costs in this proceeding and in the *Declaratory Order* proceeding. Riffin's bad behavior can be effectively deterred by making him pay for the consequences of his unlawful and unethical conduct.

CONCLUSION

BNSF respectfully urges the Board to summarily reject the Motion to Strike, the Sanctions Motion and the Riffin Motion as procedurally defective. Alternatively, the three Motions should be denied as lacking merit. The Response, while also procedurally defective, should be accepted into the record to the extent it demonstrates the false and meritless nature of the Petition. In addition, the Board should impose appropriate sanctions on Riffin and Kessler so as to protect the integrity of the Board's processes.

Respectfully submitted,



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(202) 638-3307

Attorneys for
BNSF Railway Company

Dated. March 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply has been served on the following by
first class mail this 30th day of March, 2009.

James Riffin
1941 Greenspring Drive
Timonium, MD 21093

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072


Karl Morell

EXHIBIT 1



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASCH TURNBULL, II
CIRCUIT ADMINISTRATIVE JUDGE AND
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-487-8847

IN RE: JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*

* * * * *


MEMORANDUM OPINION

As Chief Administrative Judge of the Circuit Court for Baltimore County, it has come to my attention that James Riffin is a party to thirteen (13) open cases before the Court. All of these cases arise out of the same legal controversy; to wit, whether he, as an alleged railroad operation, is exempt from State and local environmental regulations. After reviewing the numerous previously decided cases involving Mr. Riffin and state and local authorities, it is clear that the legal controversy underlying this dispute has already been decided against Mr. Riffin in administrative, State and Federal Courts. However, Mr. Riffin continues to file frivolous and vexatious litigation against Baltimore County and various County officials, including the Assistant County Attorneys working on these cases, for the purpose of avoiding or forestalling

the legal rulings that this and other courts have made against him. It appears that the volume of papers that Mr. Riffin has filed in this Court has increased since he was declared a frivolous litigant by Judge Richard Bennett and barred from filing any further papers in the United States District Court without first obtaining leave of Court. See Civil Action No. RDB-07-2361.

Courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims. See Maryland Rule 1-341. While an argument for the payment of attorney's fees could already be made in this case, the Court will reserve on this issue and instead hold that Mr. Riffin is hereby declared a frivolous litigant. Accordingly, before Mr. Riffin will be permitted to file any further pleadings or civil actions in this Court, he will be required to seek leave to do so from the Administrative Judge or acting Administrative Judge of this Court. Mr. Riffin will be required to state succinctly how the original complaint or subsequent pleading differs from other actions filed and adjudicated by this Court. No pleading will be accepted for filing by Mr. Riffin, or on Mr. Riffin's behalf, until he obtains prior approval from the Court. In the event that Mr. Riffin does obtain such approval, and it is revealed that he misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to further sanctions. A separate Order follows.

February 3, 09
DATE


HON. JOHN GRASON TURNBULL, II
Chief Administrative Judge
Circuit Court for Baltimore County



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
CIRCUIT ADMINISTRATIVE JUDGE AND
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21284
410-657-6647

IN RE: JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*


* * * * *

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 2nd day
of February, 2009, by the Circuit Court for Baltimore County, hereby ORDERED that:

1. James Riffin is hereby declared a frivolous litigant.
2. The Clerk SHALL NOT ACCEPT FOR FILING any pleadings filed by James Riffin, or filed on his behalf, unless he has first obtained leave of this Court to do so from the Administrative Judge or acting Administrative Judge of this Court.

3. The Clerk **SHALL MAIL** a copy of the foregoing Memorandum Opinion and a copy of this Order to Mr. Riffin.



HON. JOHN GRASON TURNBULL, II
Chief Administrative Judge
Circuit Court for Baltimore County

Co: James Riffin
John E. Beverungen, Esquire
The Honorable Peter B. Krauser

EXHIBIT 2

EXHIBIT THREE

MDRC

81 Century Lane
Watchung, NJ 07069

Phone (908) 361-2435

February 22, 2007

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

Dear Mr. Kessler:

Recently we read your Notice of Intent to File an Offer of Financial Assistance in AB 6 (Sub No 430X), *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, Oklahoma*. In your filing, you indicated you have a desire to purchase from BNSF that portion of its line that it desires to abandon in Oklahoma City, Oklahoma

Our company is looking for a location to maintain and repair rail cars. Oklahoma City would be an ideal location for these activities, particularly since a rail car manufacturer is located less than one mile from the line you propose to purchase. In addition, the line you propose to purchase is located adjacent to a Union Pacific line. Having access to two Class I carriers is highly desirable.

With the above in mind, if you are successful in acquiring the BNSF line, please contact us, so that we may move forward with our desire to locate our facility along your newly purchased line

Sincerely,



J. Dennis, CEO
MDRC

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Mdrc-1 Llc

1941 Greenspring Dr, Lutherville Timonium, MD 21093-4158

Contact Phone: (443) 414-6210

URL (web address):

Business Category: Real Estate Development in Lutherville Timonium, MD

Industry (SIC): Land Subdividers and Developers, Except Cemeteries

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Mdrc-1 Llc's line of business is real estate development

Company Name: Mdrc-1 Llc [Is This Your Company?](#)

Address: 1941 Greenspring Dr, Lutherville Timonium, MD 21093-4158 ([Map](#))

Alt Business Name:

Location Type: Single Location

Est. Annual Sales: \$200,000

Est. # of Employees: 1

Est. Empl. at Loc.: 1

Year Started:

State of Incorporation:

SIC #Code: 6552

Contact's Name: James Riffin

Contact's Title:

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